

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LEROY HICKS, JR.,

Plaintiff,

v.

Civil Action Number: 2:11-cv-347

UNION PACIFIC RAILROAD COMPANY,

Defendant.

COMPLAINT

AND NOW, comes the plaintiff, Leroy Hicks, Jr., by and through his undersigned counsel and files this Complaint for violations of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq* as amended and the Louisiana Employment Discrimination Law, La. R.S. section 23:301 *et seq.* against the defendant, Union Pacific Railroad Company.

NATURE OF ACTION

1. This is a proceeding to remedy discrimination seeking declaratory and injunctive relief and for damages against defendant, Union Pacific Railroad Company (hereinafter generally referred to as “Defendant”), to redress the deprivation of rights secured to the plaintiff by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq* and the Louisiana Employment Discrimination Law, La. R.S. section 23:301 *et seq.* Plaintiff, Leroy Hicks, Jr., seeks a declaratory judgment and injunctive relief to restrain Defendant from maintaining practices, policies, customs, and usages, which discriminate against plaintiff because of his race or in retaliation for filing complaints of discrimination.

JURISDICTION and VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343 (4), Title VII and principles of pendent jurisdiction. Jurisdiction to grant injunctive and declaratory equitable relief as well as damages is invoked pursuant to 42 U.S.C. § 2000e-5(f) and (g).

3. The plaintiff, Leroy Hicks, Jr., has exhausted the administrative remedies as evidenced by the Equal Employment Opportunity Commission's Dismissal and Notice of Right to Sue issued on May 12, 2011.

4. Venue lies within this judicial district, since the actions complained of herein occurred within the Eastern District of Texas. Specifically, Mr. Hicks maintained seniority on the Longview Hub and the events leading to his termination occurred in Marshall, Texas.

PARTIES

5. Plaintiff, Leroy Hicks, Jr. is an adult male who was employed by Union Pacific Railroad Company as a Conductor and resides in Shreveport, LA 71118.

6. The defendant, Union Pacific Railroad Company, is a corporation with business operations located throughout Texas and Louisiana with its corporate headquarters at 1400 Douglas Street, Omaha, Nebraska 68179.

7. Defendant, Union Pacific Railroad Company, is an employer within the meaning of Title VII and the Louisiana Employment Discrimination Law.

STATEMENT OF CLAIMS

8. Plaintiff, Leroy Hicks, Jr. began his employment with the defendant on or about June 21, 2004.

9. Plaintiff, Leroy Hicks, Jr., was terminated on June 2, 2009 for allegedly getting on and off moving equipment.

10. However, Mr. Hicks denies he violated any rules for getting on or off moving equipment despite being disciplined and terminated. Additionally, non-African American employees have not been charged or disciplined as harshly for committing the same or similar offenses.

11. Larry Irwin made racially derogatory remarks to plaintiff including calling him a n-----.

12. Mr. Hicks was placed on the Preferred Attention List (PAL) resulting in higher scrutiny of his work performance despite never having any personal injuries.

13. While employed at Union Pacific, Mr. Hicks made both formal and informal complaints of discrimination including calling the EEO hotline. Despite making complaints, to Mr. Hicks's knowledge, no corrective action was taken.

14. On or about June 2, 2009, Mr. Hicks was terminated based upon his complaints of racial harassment constituting disparate discipline and unlawful retaliation.

15. Plaintiff has exhausted all administrative remedies under Title VII and the Louisiana Employment Discrimination Law.

**COUNT I
(RACIAL DISCRIMINATION UNDER TITLE VII AND 23:301 et)**

16. The plaintiff, Leroy Hicks, Jr. repeats and realleges each and every allegation in the above paragraphs of this complaint with the same force and effect as if fully set forth herein.

17. By the acts above, the defendant, Union Pacific Railroad Company, has violated Title VII and the Louisiana Employment Discrimination Law by discriminating against the plaintiff, Leroy Hicks, Jr. because of his race in the terms, conditions and privileges of his

employment including his termination effective June 2, 2009. Specifically, Mr. Hicks is a member of a protected class, African American, who was called racially derogatory names by his supervisor and terminated for a rules violation which he did not commit and for which other non-protected employees were either not charged or received less discipline.

18. The defendant, Union Pacific Railroad Company's, acts were with malice and reckless disregard for plaintiff's federally protected civil rights.

19. The plaintiff, Leroy Hicks, Jr. has and will continue to suffer irreparable injury and monetary damages as a result of the defendant, Union Pacific Railroad Company's, discriminatory practices unless and until this Court grants relief.

**COUNT II –
RETALIATION UNDER TITLE VII AND 23:301 et**

20. The plaintiff, Leroy Hicks, Jr. repeats and realleges each and every allegation in the above paragraphs of this complaint with the same force and effect as if fully set forth herein.

21. Mr. Hicks made formal and informal complaints to Union Pacific about discrimination and was subsequently disciplined and terminated. A causal connection exists between the complaints made and the discipline imposed including termination due to proximity in time and inconsistent application of policies.

22. Mr. Hicks was bird-dogged, disciplined and terminated because of his complaints of disparate treatment and discrimination.

23. Plaintiff denies that he violated any rule resulting in dismissal, and that, he was in fact retaliated against for making complaints of discrimination.

PRAYER FOR RELIEF

24. WHEREFORE, plaintiffs respectfully request that this Court:

- a. Enter a judgment declaring that the acts and practices of the defendant are in violation of the laws of the United States;
- b. To order the defendant, Union Pacific Railroad Company, to reinstate plaintiff to his position he held prior to his discriminatory and retaliatory discharge pursuant to Title VII of the Civil Rights Act, and Louisiana Employment Discrimination Law;
- c. To award plaintiff all of his pay and fringe benefits Union Pacific Railroad Company's, unlawful discrimination; To award compensatory and punitive damages under all applicable laws to make plaintiff whole and based upon Union Pacific Railroad Company's conduct that was malicious or undertaken with reckless disregard for his civil rights;
- d. To award the plaintiff, Leroy Hicks, Jr. such other and further relief including equitable and injunctive relief as this Court deems just and proper including to back pay, reinstatement, front pay, and to permanently enjoin the defendant, Union Pacific Railroad Company, its officers, successors and assigns and all persons in active concert or participation with them from engaging in any employment actions or practices that discriminate on the basis of race and retaliation;
- e. Order the defendant, Union Pacific Railroad Company, to pay the costs and reasonable attorney's fees incurred by the plaintiff, Leroy Hicks, Jr.; and
- f. Grant such other relief as the Court deems necessary and proper including reinstatement or front pay.

JURY TRIAL DEMANDED.

Respectfully submitted,

MORGAN & PAUL, PLLC

/s/ Gregory G. Paul

GREGORY G. PAUL, ESQUIRE

TX ID Number: 24054974

409 Broad Street

Suite 270

Sewickley, PA 15143

(412) 259-8375

(888) 822-9421 (facsimile)

gregpaul@morgan-paul.com